U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: OCT 2 9 2013 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, arts, or business. The petitioner seeks employment as a nurse and clinical instructor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement and copies of various letters and certificates, most of them submitted previously. The petitioner states that she will submit additional materials with 30 days. To date, five months after the filing of the appeal, the record contains no further materials from the petitioner, indicating that the record is complete as it now stands.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Exceptional Ability / Advanced Degree Professional

The petitioner filed the Form I-140 petition on April 10, 2012. The petitioner claimed exceptional ability in the sciences, arts, or business. The director did not consider the petitioner's claim of exceptional ability. Instead, noting the petitioner's master's degree in clinical program development (evaluated as the equivalent of a United States master's degree), the director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines a "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." Nursing does not meet this definition. Section 101(a)(32) of the Act does not list nursing, and the Department of Labor-sponsored O*NET database places registered nurses among those occupations that "require training in vocational schools, related on-the-job experience, or an associate's degree." O*NET also indicates that 68% of registered nurses were able to secure employment with either an associate's degree or "[s]ome college, no degree."[1] Therefore, a bachelor's degree is not a requirement for entry into the occupation of registered nursing. Section 101(a)(32) of the Act does, however, list "teachers in . . . colleges" as practicing a profession. The petitioner previously worked as a clinical instructor at the Philippines. The petitioner's stated intent to continue working as a clinical instructor, therefore, appears to indicate an intention to work in a profession in the United States.

National Interest Waiver

The issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve

[1] http://www.onetonline.org/link/summary/29-1141.00#JobZone (printout added to record September 19, 2013).

the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

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In a letter submitted with the petition, the petitioner explained why she believed she qualifies for the waiver. The petitioner did not discuss the three-pronged *NYSDOT* national interest test. Instead, she first provided background information about nursing and a shortage of nurses that is expected to worsen as the United States population ages. The information about nursing establishes the occupation's substantial intrinsic merit, but there is no blanket waiver for nurses. *NYSDOT* states that a shortage of qualified workers is not grounds for the national interest waiver. *Id.* at 218. The only exception, enacted by Congress after *NYSDOT*'s issuance, relates to certain physicians in designated shortage areas. *See* section 203(b)(2)(B)(ii) and 8 C.F.R. § 204.12.

The petitioner did not claim or attempt to demonstrate that her work as a nurse and clinical instructor would produce benefits that are national in scope. She asserted that labor certification is expensive and time consuming, but this is a general assertion about labor certification rather than a reason to waive the requirement in her particular case. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *NYSDOT*, 22 I&N Dec. 223.

The petitioner asserted that her education and experience have placed her in a good position to excel in her work both as a nurse and as an educator. At the time of filing, the petitioner did not explain what impact her work has had beyond the patients in her care and the institutions that have employed her.

The petitioner documented her academic degrees and her claimed employment experience, and submitted letters from former employers. These individuals praised the petitioner's qualifications and the quality of her work, but did not indicate that the petitioner had any broader impact on her field. Being a highly qualified nurse and instructor is not grounds for the national interest waiver.

On September 11, 2012, the director issued a request for evidence, instructing the petitioner to submit evidence to "establish . . . a past record of specific prior achievement with some degree of influence on [her] field as a whole." In response, the petitioner asserted that, as an instructor, she will influence nursing students who will then work in "different parts of the United States." The petitioner has not established that teaching nursing inherently influences the field (as opposed to individual students) for the purposes of the benefit sought.

The petitioner asserted that her master's "degree is unique since it trains medical field graduates in the different areas of clinical program development. It is not only limited to nursing but in other areas of medical fields that utilizes [*sic*] clinical or hospital trainings [*sic*]." An academic degree is not evidence of impact or influence on the field. In the beneficiary's case, she stopped working in her field approximately one month after she received the degree in April 2011. She entered the United States on May 18, 2011, as a B-2 nonimmigrant visitor for pleasure – a classification that does not permit employment. *See* 8 C.F.R. § 214.1(e). The record contains several lists of the jobs the petitioner has held, and she did not claim any employment experience in the United States. The petitioner has not established that her master's degree has led to any influential achievements in her field, or even to any employment prospects in the United States.

The petitioner described a research study she undertook as a graduate student:

> I did a research study on the Nursing Languages' Knowledge and Practices of Staff Nurses. . . . The result of this study is to develop a training program for the staff nurses to enhance their knowledge and practices in the use of nursing languages thereby improving the quality of care provided to their clients. The training program was formulated by the beneficiary and was recommended for the implementation by the Nursing Administration of the hospital in collaboration with the college of Nursing.

The petitioner did not establish implementation outside of the one hospital, or show that the training program had led to significant improvements in nursing care. Additional materials further documented the petitioner's career in nursing, but did not show that she stood out from others in her occupation.

The director denied the petition on February 27, 2013, stating that the petitioner had met only the "intrinsic merit" prong of the *NYSDOT* national interest test. The director quoted *NYSDOT*'s discussion

of how a worker shortage in a given occupation does not warrant the national interest waiver for workers in that occupation.

On appeal, the petitioner submits copies of twelve letters and certificates, eight of which the petitioner had submitted previously. Two of the newly submitted exhibits are letters from officials at Saudi Arabia, where the petitioner claims to have worked from 1984 to 1992. A certificate from 1990 concerned the organization of a seminar on critical care, and a certificate from 1995 acknowledged "support service and leadership" regarding an "infection control principles regional vocational course."

In a new statement on appeal, the petitioner repeats the assertion that a person involved in training nurses can have a national impact through "training activities during seminars, workshops and conferences." Familiarity with an innovation has less weight than the innovation itself. *Cf. NYSDOT*, 22 I&N Dec. 221 and 221 n.7. The petitioner has not shown that her training efforts have led to widespread adoption of her own innovations.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

For the reasons discussed above, the petitioner's evidence does not support approval of the petition and the waiver application. There are, however, additional concerns regarding some of that evidence. The documentation regarding the petitioner's claimed experience in Saudi Arabia shows several different names, including To explain the appearance of the name and its variant the petitioner submitted a copy of an "Affidavit of Discrepancy" that she executed on June 25, 2008. In that document, the petitioner stated:

> I am the legal wife of the late who died on August 22, 2002 due to Cardiorespiratory arrest secondary to Acute parietal lobe. . . .
>
> [W]hen we both embraced ISLAM RELIGION, our respective first names were changed to reflect and to be true to our conviction as ISLAMS [*sic*], so that as my first name was changed to while that of my late husband was changed to Attached hereto as Annex "A" is a machine copy of Form No. 40 issued by the Foreign Service of the Philippines, pertaining to the birth of our child who was born [in] Saudi Arabia on May 21, 1990, reflecting therein our Islam [*sic*] names, respectively, while Annex "B" hereto, is our marriage contract reflecting our respective Christian names.

She signed the affidavit '" The photocopy did not include Annexes A or B.

The petitioner also submitted an original (not photocopied) "Affidavit of Discrepancy," dated January 21, 2009, in which she stated:

> I am the wife of the late who died on November 21, 2008 due to Cerebral Infarction.
>
> . . . I amended my name in my Philippine health Document last October, 2008 based on my Islamic marriage dated March 22, 1995. . . .
>
> [W]hen my husband and I embraced ISLAM RELIGION, our respective first names were changed to reflect and to be true to our conviction as ISLAMS [*sic*], so that as my first name was changed to while my husband was changed to

The petitioner signed the affidavit '

The two quoted affidavits are not consistent with one another. The two affidavits use similar language to describe her conversion to Islam, but the 2008 affidavit indicated that she and "both embraced ISLAM RELIGION" and were using Islamic names as early as May 1990. Variants of the claimed Islamic name appear on several certificates issued before 1995, such as a certificate dated November 1990, showing the name In the 2009 affidavit, however, the petitioner claimed: "I amended my name . . . based on my Islamic marriage dated March 22, 1995" to The 2009 affidavit contained no indication that the petitioner had already been using the Islamic name ' for several years before 1995.

On January 21, 2009, the same date as the petitioner's second affidavit, signed a joint affidavit indicating that the petitioner "embraced ISLAM RELIGION and assume[d] the name and later married on March 22, 1995." This assertion explains the pre-1995 references to "Jauhara," but contradicts the petitioner's claim: "I amended my name . . . based on my Islamic marriage dated March 22, 1995."

The petitioner did not claim that either marriage ended in divorce. was alive in June 2008, but the petitioner did not mention him in her June 2008 affidavit. Instead, she stated: "I am the legal wife of the late " In the January 2009 affidavit, however, the petitioner claimed to have called herself ' on government forms that she filed in October 2008, shortly before 's death in November 2008.

The petitioner has claimed two different conversions to Islam, one *circa* 1990 and one in 1995, and to have changed her name to "Jauhara" on both occasions. Neither affidavit mentions the spouse named

on the other affidavit, and the petitioner has not explained how she was still "the legal wife of the late [redacted]" as late as 2008 if she married [redacted] in 1995. Based on these contradictory statements, the petitioner has not established that the documents that refer to [redacted] or [redacted] relate to her.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Based on the conflicting claims, the petitioner has not established that the documents relating to [redacted] relate to the petitioner. For reasons explained above, the AAO would have dismissed the appeal even without the conflicting claims relating to the petitioner's claimed use of a different name.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.